at the same time still be refined. The Court noted the trial court must determine only whether a scientific method was used to arrive at the assertion; it should exclude an opinion based on "unsubstantiated and undocumented information," but not because scientists in the field are still refining the methodology. EPA approval of a method is not a precondition to admissibility. It is admissible when, as was the case here, a method is recognized by at least a minority of scientists in the field.

The District Court also excluded the expert testimony because the methods were not subject to retesting, "given the failure to take dual samples." The Circuit Court disagreed, pointing out that three other labs – including the U.S. Geological Survey, Oak Ridge National Lab, and the University of Chicago – had used the expert's methodology. Finally, the appeals court found the remaining issue raised by SQM, specifically that the expert did not follow his own procedures, was also a question for the jury and not a reason to exclude. The Ninth Circuit held the District Court abused its discretion in excluding the testimony and remanded the case for trial.

http://cdn.ca9.uscourts.gov/datastore/opinions/2014/05/02/12-55147.pdf (last accessed June 3, 2014).

Religion: Police Department Directive that Officer Attend Non-religious Event at Mosque or Send Subordinate on his Behalf Does Not Violate First Amendment

Fields v. City of Tulsa, No. 12-5218 (10th Cir. May 22, 2014).

A police supervisor who sued his department for violation of the Free Exercise and Establishment clauses because the department ordered that that he, or a member of his squad, attend a community event at a mosque has been rebuffed-both at the district court and the Tenth Circuit.

In 2010 the FBI notified the Islamic Society of Tulsa (Society) that there was a threat against it. For months thereafter the Tulsa Police Department (TPD) worked with the Society to protect it and its school next door. Once the threat passed the Society invited the TPD, as well as local FBI officers and the Attorney General's office to attend a "law enforcement appreciation day" to thank those involved. Top officers in the TPD forwarded an email invitation for the event to supervisors and, having not received any RSVPs a month prior to the event, ordered supervisors to send two officers from each division to the event, including a supervisor or commander. It is noteworthy that TPD had been using a "community policing" model in Tulsa for over 20 years, wherein they often worked closely with groups in the community to build relationships and in that time had attended over 3500 community events like this, over 350 of which were with various religious institutions/organizations.

Captain Fields, a supervisor in charge of roughly 30 officers, responded to the email order by stating that he believed "this directive to be an unlawful order, as it is in direct conflict with my personal religious convictions, as well as to be conscience shocking" and that "forcing me to enter a Mosque when it is not directly related to a police call for service is a violation of my Civil Rights." Fields included his lawyer on the communication. The deputy chief of police responded with a three-page letter noting that officers were not required to engage in any services or worship or even observe services, but rather to meet with members of the community.

Moreover, he highlighted that Fields was not required to attend - he could order others to do so. It recommended he reconsider his position in light of the potential ramifications of not following a lawful order. Fields responded that he would not reconsider, at which point the department notified him he was immediately transferred from his captain position and an internal affairs investigation would follow. Fields filed suit. The rest of the department and media picked up the story soon after this development and, when the event was held on March 4, over 150 officers attended, none of whom were ordered to do so. No officers from Fields' former shift attended.

Fields' complaint against the TPD and individual high-ranking officers alleged they had violated the Free Exercise Clause, the Establishment Clause, his Freedom of Association, and the Equal Protection Clause. The Court also noted the complaint included "five pages of allegations about "shariah-adherent" Islam and the Islamic Society, with references to "jihad" and the Muslim Brotherhood."" Fields sought damages, a declaration that his rights were violated, and the expungement of his personnel records, as well as reinstatement to his former position. The parties filed cross-motions for summary judgment and the District Court granted judgment to the defendants. Captain Fields appealed.

HELD: The Tenth Circuit affirmed the District Court on all issues, concluding that Fields' rights had not been violated.

DISCUSSION: Fields alleged that his Free Exercise Clause rights were violated because the order forced him to attend the Society event, or direct his subordinates to do so. The Tenth Circuit found no burden existed here since the order did not, as Fields' briefs contended, force him "to enter a Mosque." Rather, he could have sent others in his stead-and he had made no claim that ordering others to go somehow violated his religious beliefs.

The Tenth Circuit analyzed Fields' Establishment Clause under the *Lemon* test, meaning government action does not violate the Clause if "(1) it has a secular purpose; (2) its principal or primary effect [is] one that neither advances nor inhibits religion; and (3) it does not foster an excessive government entanglement with religion." Fields argued the TPD's action had the primary or principal effect of endorsing Islam. The Court roundly rejected this by citing the fact that the TPD engaged in community policing for over 20 years; that it had officers attend over 350 religious organizational events in that time; that the invitation clearly stated the event was to thank the department for its work; that the atmosphere was one where officers were invited to tour the facility, observe the services, ask questions about Islam, all on a voluntary basis; and that officers were expected to do nothing more than meet members of the public. Fields insisted the event was different from all the others since it involved Islamic proselytizing, which he supported by noting it was held on a Friday, a holy day for Muslims, and that during the event members of the Society discussed their religious beliefs. The Circuit Court was not persuaded because "no reasonable person could view the purpose or effect of the TPD's attendance at the event as suggesting that Islam is a preferred religion." It concluded that the "Establishment Clause does not prohibit governmental efforts to promote tolerance, understanding, and neighborliness."

Fields also alleged that TPD violated his Freedom of Association by punishing him for objecting to the order. The court held that TPD had not interfered with any such right, because Field was not prohibited from engaging in any association. His claim that he was being forced to associate with the Society was equally disposed of.

Last, Fields pressed an Equal Protection Clause claim based on his fundamental right to the free exercise of religion. The court immediately disposed of this claim however, because he failed to distinguish it from his Free Exercise claim - making it nothing more than a "rephrasing" of his Free Exercise claim.

http://www.ca10.uscourts.gov/opinions/12/12-5218.pdf (last accessed June 4, 2014).

Search and Seizure: Anonymous 911 Call Giving Specific Vehicle Description and Alleging Criminal Activity Provides Law Enforcement with "Particularized and Objective Basis" to Make Traffic Stop

Navarette v. California, No. 12-9490 (U.S. Apr. 22, 2014).

The Supreme Court has upheld a California decision in which police stopped a vehicle which had been specifically described in a 911 call as having driven the caller off the road—despite the fact that no officer observed the vehicle being driven improperly before making the stop.

In August 2008, the California Highway Patrol (CHP) in Mendocino received a call from the CHP in neighboring Humboldt County, relaying a tip from a 911 caller who stated that she had been run off Highway 1 by a southbound Silver Ford 150 pickup only five minutes earlier. The caller provided the offending vehicle's license plate and its milepost location.

Approximately 20 minutes later, a CHP officer spied the pickup, followed it briefly and pulled it over. Another squad car soon arrived. Neither officer had witnessed the truck weaving or otherwise being operated in an unusual fashion. As the officers approached the vehicle, they smelled marijuana. A subsequent search of the truck bed uncovered 30 pounds of the contraband. The pickup's driver and passenger were arrested.

Petitioners moved to suppress, arguing that the traffic stop violated the Fourth Amendment because the officers lacked reasonable suspicion of criminal activity. The magistrate who presided over the suppression hearing disagreed, as did the California Superior Court. Petitioners pleaded guilty to transporting marijuana and were sentenced to 90 days in jail plus three years of probation. The California Court of Appeal affirmed and the California Supreme Court denied review.

The Supreme Court granted certiorari, heard the case in January and issued its opinion on April 22, 2014.

HELD: The majority opinion, written by Justice Thomas and joined by Justices Roberts, Kennedy, Alito and Breyer, affirmed the lower courts, confirming that the Fourth Amendment permits a traffic stop when a law enforcement officer has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States* v. *Cortez*, 449 U. S. 411,417-418 (1981); see also *Terry* v. *Ohio*, 392 U. S. 1, 21-22 (1968). Although a mere "`hunch'" does not create reasonable suspicion, the level of suspicion the standard requires is "considerably less than proof of wrongdoing by a preponderance of the evidence," and "obviously less" than is necessary for probable cause, *United States* v. *Sokolow*, 490 U. S. 1, 7 (1989).